IN THE

Supreme Court of the United States.

Spreckels Sugar Refining Company,
Plaintiff in Error,

vs.

Penrose A. McClain, Collector of Internal Revenue for the First District of Pennsylvania, Defendant in Error.

[Record No. 18,631.]

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR PLAINTIFF IN ERROR.

INDEX.

	Page
I. Statement of the Case	1
II. Assignments of Error relied on	3
III. Argument	3
(1.) Scope of Section 27 of the War Revenue Act	4
(a.) As to wharfage	5
(b.) As to interest on deposits and dividends from investments	10
(2.) Constitutionality of Section 27 of the War Revenue Act	10

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October Term, 1903.

No. 103.

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BRIEF FOR PLAINTIFF IN ERROR.

I. STATEMENT OF THE CASE.

In the Circuit Court of the United States for the Eastern District of Pennsylvania the plaintiff in error, a sugar refining company, incorporated under the statutes of Pennsylvania for the purpose "of refining sugar, which "will involve the buying of the raw material therefor, "and selling the manufactured products, and of doing "whatever else should be incidental to the said business "of refining," sought to recover from the defendant in error, the Collector of Internal Revenue for the First District of Pennsylvania, certain sums of money which it had paid to him under protest, the same having been exacted by him under section 27 of the War Revenue Act of 1898. All the statutory prerequisite requirements of suit having been complied with, the only question was,

whether or not the sums which had been paid, had been illegally demanded and collected.

The plaintiff in error contended (1) that all the sums which had been collected had been illegally collected because of the unconstitutionality of the Act, and (2) that even though the Act, *quâ* sugar refining companies, was constitutional, payment of the tax had been exacted monthly when it was only due annually, and a tax had been imposed and collected upon certain items of receipts which were not made subject to taxation by section 27. The specific items of alleged improper assessment were upon receipts of moneys by the plaintiff in error, hereafter called Refining Company, antecedently to the Act; upon its receipts from stevedoring; upon its receipts from wharfage for the use of Refining Company's wharves; upon its receipts of interest paid to it by brokers upon its deposits, and of dividends upon shares of stock held by it in other companies; and in exacting payments of the tax monthly instead of annually.

The learned judge in the Circuit Court entered judgment in favor of the Refining Company for the amounts which had been paid by it as a tax upon receipts of money antecedently to the Act, and upon receipts of stevedoring. No appeal was taken by the United States from this portion of his judgment, and the points involved in those matters is not before this court.

He entered judgment in favor of the United States against the Refining Company upon all the other questions.

An appeal was taken by the Refining Company to the Circuit Court of Appeals for the Third Circuit. It sustained the appeal so far as it involved the question of the right of the United States to exact payment of the tax monthly instead of annually. From this portion of the judgment no appeal has been taken by the United States.

The learned Circuit Court of Appeals decided, the court being divided in opinion, that a tax was properly assessed upon the receipts of wharfage, of interest upon

deposits of the company's money, and of dividends on its shares of stock. It also decided in favor of the constitutionality of the Act.

From this judgment of that court the present appeal was taken.

The Refining Company was the owner of wharves on the river Delaware, at which vessels landed their cargoes. The principal use of these wharves was by ships which brought sugar to the Refining Company, but they were public wharves, which were open to public use and were, by the public generally, used. The United States Government assessed a tax upon the receipts from this source.

The Refining Company was also the owner of shares of stock in other corporations, presumably to a large extent, sugar refining companies, which, respectively, paid tax as sugar refineries. It also had, from time to time, large sums of money to its credit in banks, which paid it (defendant) interest thereon. From time to time it collected the dividends declared upon the shares of stock it held. Upon all these receipts taxes were assessed.

II. ASSIGNMENTS OF ERROR RELIED UPON.

The Refining Company relies upon assignments of error to the action of the Circuit Court of Appeals, in deciding (1) that the Act of Congress, approved 13th June, 1898, so far as it assessed a tax upon the gross receipts of sugar refining companies, was constitutionally made; (2) that its receipts from wharfage were liable to taxation; and (3) that its receipts of interest upon its deposits and of dividends upon shares of stock to it belonging were liable to assessment.

III. ARGUMENT.

We will consider the case under two heads, viz., (1) whether or not the section of the War Revenue Act imposing a tax on sugar refining companies' receipts

was constitutional, and (2) whether the tax imposed upon the specific items complained of, was properly exacted. While the discussion will be under these two heads; what is thought necessary to be said upon the question of the unconstitutionality of the section will be said last.

The Collector claimed that the section was constitutional because it imposed, not a tax upon property, but an excise tax, and the learned judges in the Courts below so held.

We will therefore assume, in seeking to establish the incorrectness of the decisions, which sustained the tax upon the items complained of, that the section imposed an excise tax and was therefore constitutional. If the section was unconstitutional, all questions of detail will be unimportant.

We therefore maintain two propositions.

I. SECTION 27 OF THE WAR REVENUE ACT IMPOSES AT MOST AN EXCISE TAX UPON THE BUSINESS OF SUGAR REFINING AND THE RECEIPTS THEREOF. NO TAX WAS IMPOSED UPON SUGAR REFINING COMPANIES OR OTHER PERSONS OR CORPORATIONS, UPON RECEIPTS OF ANY BUSINESS OTHER THAN THAT OF SUGAR REFINING.

II. SECTION 27 OF THE WAR REVENUE ACT IS UNCONSTITUTIONAL BECAUSE IT IMPOSES A DIRECT TAX NOT IN ACCORDANCE WITH CONSTITUTIONAL REQUIREMENTS.

I. Section 27 of the War Revenue Act imposes at most an excise tax upon the business of sugar refining and the receipts thereof. No tax was imposed upon sugar refining companies or other persons or corporations, upon receipts of any business other than that of sugar refining.

This proposition will be discussed under two heads:—

(*a.*) Section 27 imposes no tax upon receipts by sugar refining companies from wharfage paid to them for the use of wharves to them belonging.

(*b.*) Section 27 imposes no tax upon receipts by sugar refining companies of interest paid to them upon their deposits in bank or of dividends from investments by it in shares of stock of other corporations.

(a.) *Section 27 imposes no tax upon receipts by sugar refining companies from wharfage paid to them for the use of wharves to them belonging.*

The testimony with regard to the wharfage was given by Mr. Joseph A. Ball. (Record, pages 9, 10, 13.) He testified that the Refining Company had three wharves on the Delaware River; that vessels which came to said wharves paid what was called "wharfage," for the privilege of lying along the same; that this "wharfage" was prescribed by a general tariff; that a large part of the raw sugar which it refined was imported into the port of Philadelphia; that vessels which brought such cargoes for use in the refinery were charged wharfage; that many of these vessels contained raw sugar imported by the Refining Company, as the result of purchases made by it abroad; that the wharves were built for the purpose of transacting any shipping business that it might have or for which it should see fit to use the same; that nearly all of the business done at said wharves was the unloading of sugar consigned to it, and that upon its receipts from such wharfage the company had been compelled to pay a tax.

It thus appeared that the Refining Company collected wharfage generally, and from vessels not chartered to it, which transported to it raw sugar purchased abroad and imported by it into this country. Was there any obligation upon it to pay any percentage upon receipts from this source? The learned judge, in his opinion sustaining the imposition of the tax upon this portion of the plaintiff in error's receipts, said (Record, page 27):—

> "Scarcely any vessels lie at these wharves except "the vessels that bring raw sugar to the plaintiff, "and the wharves are used for the convenience and "greater profit of the corporate enterprise. The "money paid by the vessels for wharfage is, I think, "a receipt of the business."

It was contended by the United States attorneys, that the percentage was required to be paid upon the "gross "amounts of all receipts"; and that as the receipts by the plaintiff in error from "wharfage," were part of said gross receipts, the amount thereof was necessarily included in that upon which the percentage was calculated.

The plaintiff in error does not contend that if the percentage must be calculated upon the amount of all "its "gross receipts," amounts received from wharfage must not be included. The contention is, however, that the percentage must be calculated simply upon the gross receipts from the business of refining, not upon those derived from any other business which it may conduct. This branch of the argument, being made upon the assumption that an excise tax is legally imposed by section 27 upon the business of refining sugar, such section must naturally be so construed as not to impose an increased excise tax upon the business of sugar refining, because of the doing by the sugar refiner, of some other business similar to that done by other persons who are not taxed therefor.

The tax is imposed, not only upon every company, but also upon "every person, * * * carrying on, or doing, "the business of refining sugar."

Could it possibly be held, in the case of an individual, carrying on the business of a banker, of manufacturing steel, of investing his money, and of refining sugar, that it would be his duty to pay a tax equivalent to a percentage, upon his receipts from banking and manufacturing, and in the shape of dividends, as well as from refining sugar? Would not such person be exempt from any duty to make return of his receipts from his banking, from his steel manufacturing, and of dividends upon his general investments? Would he not fully satisfy the requirements of the section by making returns of his gross annual receipts from the business of refining sugar?

If an individual can be compelled only to make return of his gross annual receipts from the business of refining sugar, how can it be held that a company which transacts

several different kinds of business, including that of refining sugar, must pay a percentage upon anything other than upon its gross receipts from the latter?

It is true the plaintiff in error bought raw sugar abroad and imported it into this country for the purpose of refining, and, thereafter, of selling the same when refined. The business of importing the raw material, however, was as distinct when conducted by it, as it would have been if it had been conducted by a sugar merchant. It would have been within the power of the plaintiff in error to purchase its sugar from an American merchant after the latter had imported the same. The business of the American merchant would not have been taxable, because it was not that of "refining sugar." Why, then, should the receipts from an entirely separate business be held taxable, when the Government intended only to impose a so-called excise tax upon the business of refining sugar?

The business of building wharves for the accommodation of vessels with the power to demand wharfage therefor was still more distinct than would be the business of a sugar importer. The wharfage was paid by third persons, who, under charter parties, transported and delivered the sugar to the plaintiff in error, and who paid wharfage for the accommodation rendered to their vessels.

A reference to the Act shows that "every person or "company carrying on or doing the business of refining "sugar, whose gross annual receipts exceed $250,000, "shall be subject to pay annually a special tax, equivalent "to one-quarter of one per centum, on the gross amount "of all receipts of such persons * * * and companies "in their respective business in excess of said sum of "$250,000."

We submit that the tax alleged to be an "excise" tax, exacted because of the privilege of carrying on the business of refining sugar, was imposed, and was meant to be imposed, only upon the gross annual receipts from "the "business of refining sugar." It was not necessary to insert after the words, "the gross annual receipts," the word "therefrom." An excise tax imposed upon the business of

refining sugar is properly determinable only by a percentage of the gross annual receipts of such business.

The tax is not imposed upon the person or company, and, as the Government contends, it is not imposed upon the property of either. The "business" being subjected to an excise tax because of its being conducted, the amount of the tax must be ascertained by a percentage of the gross annual receipts of such business solely.

Why should the plaintiff in error be compelled to pay a percentage upon the sums received by it for the use of its wharves, when all other wharf owners are exempt from taxation upon their receipts from a like source?

It is not within the province of the defendant in error to claim that the sugar refining company was incorporated only for the purpose of doing the business of sugar refining. If it committed, and we deny that it did, any act *ultra vires,* it is responsible only to the Commonwealth which created it. The United States is not entitled, even though it should prove that the plaintiff in error did what was unlawful, to exact a share of what may be established to have been unlawful gain. If a tax is imposed upon the receipts of sugar refining alone, whether the Refining Company did business other than that, or whether such business, if done, was unlawful, is immaterial, because upon such other business, as we claim, no tax is imposed.

In the case of persons manufacturing and refining beet sugar, the Department of Internal Revenue has expressly held that they are not liable to taxation upon their gross receipts from refined sugar. The ruling of the Department to this effect was made on the fourth day of August, 1898, and was thereafter acted upon continuously. It held that the sugar refiners who limited their refining operations to sugar extracted from beets or cane produced by themselves were not sugar refiners, but sugar manufacturers, and were therefore exempt from the tax imposed upon "per-"sons carrying on or doing the business of refining sugar."

The interpretation put upon the Act by the Treasury Department would work a manifest injustice as between two sugar refining companies, one owning wharves and the

other not. Each would be charged an alleged "excise" tax upon the receipts of its business and the one which had happened to invest a portion of its capital in the construction of wharves, would be obliged to pay an additional tax upon something entirely apart from its refining business.

There is an additional objection to the tax upon wharfage receipts, growing out of the fact that even if a tax upon the receipts of business may be imposed by way of "excise," such tax may not be imposed upon receipts in the nature of rentals, because such tax is one upon the property itself, and is illegal because, being a direct tax, it is not apportioned.

What matters it how the raw sugar is produced, or what is done in the way of bringing it to the refinery, if the business of refining the same alone was taxed through the instrumentality of a percentage upon the business of refining?

A manufacturer of steel plates might import pig iron, and, in order that his importation might be facilitated, might construct wharves, to be used by the vessels bringing such pig iron to him. In case of a tax imposed upon his business of manufacturing steel plates, would he be obliged to make return of the amounts received by him as wharfage, even though most of the vessels using his wharves came to the same in order to discharge iron belonging to him?

The refiner of sugar, in his business of refining, deals with raw sugar. His business is to transform raw sugar into refined. Nothing done with the view of procuring the raw material constitutes any part of the converting of the same into the new product, refined sugar, by the process of refining.

In the discussion under this head, we are dealing with the intent of Congress. It meant to compel sugar refiners to pay a license for the doing of a refining business. It saw fit to prescribe a method of ascertainment of the amount to be paid by reference to the volume of the business. A fair construction of the language limits the receipts to receipts from the business to be taxed solely.

The Department ruling to which we have heretofore referred is again embodied in its circular of 7th July, 1899 (Record, page 17), in these words:—

"(5.) *Sugar Produced and Refined by Continuous Process.*—Manufacturers who claim to refine only "sugar of their own production, and to sell directly "to consumers, will also be required to furnish a "monthly sworn statement (to be attached to the "prescribed return, Form 420, revised), setting forth "specifically that all sugar refined by them during "the month was produced and owned by them, and "was refined on the same premises where produced "and by a continuous process, and was sold directly "to consumers. Persons, firms, corporations and "companies refining sugar not so produced, owned "and sold, will be liable to the special excise tax "imposed, and will be required to render a return on "the prescribed form of the gross amount of all re-"ceipts."

If the Act really meant what the Department said, it was unconstitutional, because it imposed an "excise" duty upon one class of refineries, and exacted no such duty from another. The plaintiff was made to pay the tax, whilst its competitors, who refined sugar made from the juice of domestic beets and cane, were allowed to escape, thereby producing "unjust and illegal discrimination be-"tween persons in similar circumstances material to their "rights." Yick Wo *vs.* Hopkins, 118 U. S., 356.

(b.) *Section 27 imposes no tax upon receipts by sugar refining companies of interest paid to them upon their deposits in bank and of rividends from investments in shares and other securities.*

What has been said under the preceding head is equally applicable to the present. An excise tax upon the gross receipts of a corporation carrying on the business of refining ought not to be imposed, and, as we contend, under section 27, was not imposed upon the income derived by the company, not from its refining, but from its investments and deposits.

Again, we suggest the illustration of an individual, carrying on incidentally the business of refining sugar. Under section 27, would it be his duty to include, amongst his gross receipts, for the purpose of enabling a percentage to be exacted, income from his investments and dividends upon his shares?

Before concluding our argument under this head, it may be well to reproduce section 27, with a view to showing the full scope of the Congressional intention, by a quotation of the words which specify all the kinds of business taxed:—

> "That every person, firm, corporation or company "carrying on or doing the business of refining petro- "leum, or refining sugar, or owning or controlling "any pipe line for transporting oil or other products, "whose gross annual receipts exceed $250,000, shall "be subject to pay annually a special excise tax "equivalent to one-quarter of one percentum on the "gross amount of all receipts of such persons, firms, "corporations, and companies in their respective "business in excess of said sum of $250,000. And a "true and accurate return of the amount of gross "receipts as aforesaid shall be made and rendered "monthly by each of such associations, corporations, "companies or persons to the collector of the district "in which any such association, corporation or com- "pany may be located, or in which such person has "his place of business."

To ascertain precisely what is meant by what is pretended to be imposed, viz., an "excise tax," we will state the meaning of the word "excise" as given in the Century Dictionary:—

> "An inland tax or duty imposed on certain com- "modities of home production and consumption, as "spirits, tobacco, &c., or on their manufacture and "sale. In Great Britain the licenses to pursue certain "callings, to keep dogs, to carry a gun, and to deal "in certain commodities, are included in the excise "duties, as well as the taxes on armorial bearings, "carriages, servants, plate, railways, &c. Excise

"duties were first imposed by the Long Parliament "in 1643. * * * But the success of internal or "inland duties on articles of consumption—or *excises*, "as they were termed, from the excision of a part of "the article taxed—in Holland, had brought prom- "inently into notice the advantages of taxes of this "description. (S. Dowell, Taxes in England, II., 8.) "*Excises* is a word generally used in contradistinction "to imposts in its restricted sense, and is applied to "internal or inland impositions, levied sometimes "upon the consumption of a commodity, sometimes "upon the retail sale of it, and sometimes upon the "manufacture of it. (Andrews on Revenue Law, "section 133.) An *excise* 'is based on no rule of "'apportionment or equality whatever,' but is a "fixed, absolute and direct charge laid on merchan- "dise, products or commodities, without any regard "to the amount of property belonging to those on "whom it may fall, or to any supposed relation "between money expended for a public object and a "special benefit occasioned to those by whom the "charge is paid. (Blackwell on Tax Titles, 4th ed., "1, n. 1.)"

Bouvier defines "excise" as "an inland imposition, paid "sometimes upon the consumption of the commodity, and "frequently upon the retail sale. 1 Bla. Com., 318; Story, "Const., section 950; Cooley, Tax., 4."

Congress professes to impose an "excise tax," and if such was its intent, the purpose was, not to tax the person generally, nor to tax any specific article as property, but to tax the "business" of dealing in specific articles or of doing a specific thing.

The tax was imposed upon three specific classes of business, viz., refining petroleum, refining sugar, and owning or controlling a pipe line for transporting oil or other products. It follows, inevitably, that as a tax was imposed upon the business, the amount thereof was directed to be ascertained by the amount transacted of the business taxed. When, therefore, a percentage was required to be paid upon the gross amount of all receipts of such persons, firms, corporations and companies, "in

"their respective business," it was not meant to increase the "excise" tax upon the business specified by taxing any other business, nor the receipts therefrom.

The percentage is to be ascertained, "on the gross "amount of all receipts of such persons, &c., in *their* "*respective business*," &c. What is the "respective busi- "ness," the gross amount of the receipts of which is subjected to a percentage? In the refining of petroleum, it is the business of refining petroleum; in the refining of sugar, it is the business of refining sugar; and in the owning or controlling a pipe line for transporting oil or other products, it is the business of transporting oil or other products through a pipe line thus owned or controlled.

Not the slightest disposition is evidenced to subject to the percentage, any gross annual receipts of the persons conducting or doing the specified class of business, other than those derived by them from the business particularized.

For example, take the case of a person engaged in the business of banking, but conducting, also, a small sugar refinery, with gross annual receipts from his refinery of but $10,000, and from his banking business of, say, $500,- 000. Would he be obliged to pay a tax upon $260, 00, part of his total receipts for the year, although in his business of refining, he received but $10,000?

The Act provides that every person, &c., "carrying on "or doing the business of refining petroleum, or refining "sugar, or owning or controlling any pipe line for trans- "porting oil or other products, whose gross annual re- "ceipts exceed $250,000, shall be subject to pay annually "a special excise tax, equivalent to one-quarter of one per "centum on the gross amount of all receipts of such per- "sons, &c., *in their respective business*, in excess of said "sum of $250,000." It is not the receipts generally of the person, firm, corporation, &c., but the receipts of those carrying on one or other of the classes of business specified, which are made the basis of the percentage. The immediate antecedent of the words "gross annual

"receipts" is the business of doing one, or other, of the things specified. Immediately thereafter, the receipts are again spoken of as "receipts of such persons, &c., in their "*respective business.*"

What business? Clearly, the business of refining petroleum, or of refining sugar, or of owning or controlling pipe lines for the designated purpose. No business is spoken of other than that of refining petroleum, or of refining sugar or of owning or controlling a pipe line. There is no antecedent of general business of which avail can be made for the purpose of swelling "the gross "amount of all receipts of such persons, &c., in their re- "spective business." A person engaged in carrying on a business different from that of refining petroleum or sugar, in addition to the latter business, is subject to no tax, and is required, concerning said business, to make no return. The return which is required is "of the amount "of gross receipts as *aforesaid.*"

We will concede that if the tax was legal, and if it was imposed upon the person to an amount equal to all his receipts, or upon the property generally of the person, or upon all the business of the person, the contention of the United States might be sustained; but we submit, with earnestness, that a person carrying on a specific business, required to make returns of said business, and subjected to an excise tax dependent upon a percentage of the gross receipts of his business, cannot be compelled to include in said returns, receipts from any other than the particular business specified.

If the business referred to in the requirement of the payment of a percentage equivalent to the gross amount of all receipts of certain persons, &c., "in their respective "business," is all business, of every sort and kind transacted by persons, &c., doing a specified business, then the learned judges in the courts below were right. If, however, the business referred to, under the designation of "respective business," was that designated in the last preceding antecedent, then they were wrong.

The nature of the investments of the appellant in secur-

ities does not clearly appear. They were, necessarily, to a certain extent, shares of stock, and, possibly, to a large extent, shares of stock in other sugar refining companies. Whatever dividends, therefore, were derived from shares of stock, must have been derived, *inter alia*, from shares of stock of other sugar refining companies, also engaged in sugar refining.

To such extent as the appellant received dividends upon shares of stock held by it in other sugar refining companies, these dividends were paid to it by the companies out of the profits of sugar refining done by them, in pursuance of a license tax which had been determined by reference to their receipts from such refining. In no sense were receipts of such dividends by the appellant company receipts from its business of refining sugar. It was solely by reason of sugar refining done by the subsidiary companies that the latter received moneys out of which their dividends were declared. Had the Refining Company done no business whatever, it would have received such dividends, but would have been subject to no license tax. The latter, therefore, cannot, in any way, be treated as receipts from its business of refining sugar.

In People *ex rel.* Chicago Junction Railways and Union Stock Yards Company *vs.* Roberts, 154 New York, 1, the relator was a New Jersey corporation, which was the owner of the entire capital stock of the Union Stock Yards and Transit Company of Illinois, engaged at Chicago in the business of "yarding" and feeding cattle. A jurisdiction to tax the relator depended "upon the exist-"ence of two concurring conditions, viz., that the corpo-"ration sought to be taxed shall be *doing business* in this "State; and, second, that its capital, or some portion "thereof, shall have been employed within this State." All the judges concurred in holding that the business of the subsidiary, was not the business of the holding, corporation, and that the only business carried on by the latter was the receipt by it of dividends from the former, and the declaring and paying by it of its own dividends. A majority of the judges held that in this business no

"capital" (as distinguished from income) could be said to be employed in the State of New York, and that the corporation was not, therefore, taxable in that State. Upon the first point, in which all the judges were in accord, their opinion was expressed by Judge Vann:—

> "Nor was it" (the holding corporation) "engaged in "business within the State of Illinois, for it neither "managed nor had the right to manage the business "of the Union Stock Yard and Transit Company, of "which it was the chief stockholder. *The business "of that corporation was not its business, for it could "not directly control the smallest detail thereof.* * * * "It was, so to speak, an '*incorporated gentleman of* "'*leisure.*'"

Even if we should concede that the dividends upon the subsidiary corporations are, within the letter of the statute, receipts in its business of sugar refining, they can, in no sense, be held to be receipts within its meaning. The court below held that the tax was not a direct tax upon the refiner's gross receipts, but an excise or license tax upon its business of refining sugar, the amount of the tax being intended to be proportionate to the magnitude of that business as evidenced by its gross receipts in each tax year. How, then, under the view of the tax held by the court below, can it be supposed Congress intended an excise tax, determined as to amount by the business done by the company, should be affected by business done, not by it, but by some other company? The United States is entitled to its excise tax upon the business of sugar refining; but it must exact it from the "person, firm, corporation or company carrying on or "doing the business," not from the stockholder who receives his share of the profits of such business.

In People *vs.* Albany Ins. Co., 92 N. Y., 458, an annual franchise tax upon certain corporations, having been imposed by the law of New York, to be measured by the amount of dividends made or declared during the year, the defendant had on hand a large surplus fund, all of which had been earned and acquired before the Act went

into effect. It was held that a portion of this surplus which was divided amongst its stockholders in shape of a dividend, was not taxable. The court said:—

> "It (the surplus) might have been the measure of "the enjoyment of the franchise during those pre- "vious years when the franchise was not taxable, but "was no measure of the value of such enjoyment dur- "ing the year 1880 or 1881, and these aggregated "earnings of several years were certainly no criterion "of the value of such franchise during any single "year. A division of property thus previously ac- "quired could not have been within the contempla- "tion of the framers of the Act in fixing upon the "annual dividends as a measure of the value of the "franchise of the corporation; and, even if a dividend "within the letter of the Act, to construe it as a "dividend for the purposes of the Act would be so "contrary to its spirit and intent that such a con- "struction is inadmissible."

In Bailey *vs.* Railroad Co., 106 U. S., 109, the New York Central Railroad Company had declared a stock dividend of eighty per cent. against improvements paid for by it out of earnings during several years prior to the passage of the Internal Revenue Act of 1864, which Act had declared that—

> "Any railroad * * * company * * * that "may have declared any dividend in scrip or money "due or payable to its stockholders as part of the "profits or gains of such company * * * shall be "subject to and pay a duty of five per centum on the "amount."

It was held by this court that only so much of the dividend as came from earnings made after the passage of the Act could be taxed. It was said:—

> "It is now urged in argument * * * that "when such a dividend has once been declared and "ascertained to come within the description of the "law as a subject of taxation, all the rest follows, "and the amount declared is necessarily established

"as the amount to be taxed. * * * the tax pro-
"vided for in this section is an annual income tax,
"and its subject is the interest paid and profits earned
"by the company for each year and year by year,
"and that both by the express letter of the law and
"its necessary implications the tax is not laid on any
"of these funds which came into being before the
"time prescribed in the Act. * * * The subject
"matter of the tax is the net earnings of the com-
"pany for the year for which they are taxed which
"have been actually realized by it, or which the law
"assumes to have been."

Even if it be held that the Refining Company's receipts of interest from loans and investments in interest-bearing securities are receipts from its business of sugar refining, it cannot be possibly held that its receipts of dividends from the business of another corporation, come within the same category.

To hold the dividends collected by the Refining Company upon shares of stock in other sugar refining companies by it owned, were liable to be returned as part of its receipts, works double taxation, inasmuch as these dividends are part of a fund arising from receipts in the hands of the subsidiary sugar refining companies from their business of sugar refining, upon which they had been compelled to pay a tax.

Whilst double taxation is possible, it is never presumed in a case like the present. As was said in Cooley on Taxation, chapter VI., page 225, 2d ed., 1886:—

"There is a sense, however, in which duplicate
"taxation may be understood—and which, we think,
"is the proper sense—which would render it wholly
"inadmissible under any constitution requiring equal-
"ity and uniformity in taxation. By duplicate tax-
"ation in this sense is understood *the requirement that*
"*one person or any one subject of taxation shall di-*
"*rectly contribute twice to the same burden, while other*
"*subjects of taxation belonging to the same class are*
"*required to contribute but once.*"

There is nothing in the Act to rebut the presumption that double taxation of receipts from the business of sugar refining was not intended.

In Bailey vs. Railroad Company, already quoted, it was said by this court:—

> "It follows also from this view of the purpose of "the law that a fund taxed in one year as the profits "of a railroad company, used for construction or car- "ried to the account of any fund, has been taxed once "for all, and cannot, as part of the earnings of the "company, be assessed a second time. The tax for "the year is upon the whole amount of the net earn- "ings distributed and enumerated under the heads "pointed out in the statute, and when the tax has "been imposed and collected upon them, or any spe- "cific part of them, there is no authority to levy any "further or additional tax. * * * There has been "a difference of opinion upon the point whether the "tax imposed by this section is upon the corporation "on account of its net profits or upon the income "of the stockholder or bondholder, although in the "present case it is immaterial which of these alter- "natives is adopted. We are not aware, how- "ever, that it has ever been suggested until now that "it might be both in succession, one year a tax upon "the income of the corporation and the next upon "the same fund as the income of the individual. We "do not think this an admissible construction."

In Merchants' Ins. Co. *vs.* McCartney, 1 Lowell, 447; 17 Fed. Cases, 46, the plaintiffs, an insurance company, owned stock in the Suffolk Bank, upon which they received a dividend of $115,200. At the time the Act of June 30th, 1864, was in force; section 120 thereof levied a duty of five per cent. upon the earnings, income or gains of any insurance company, and on all undistributed sum or sums made or added during the year to its surplus or contingent funds. Three-tenths of the dividend declared by the bank consisted of profits laid aside before the passage of this Act. Upon the remaining seven-tenths the bank had itself paid a tax. The Collector of

Internal Revenue had assessed a tax of five per cent. against the plaintiff, the insurance company, upon the whole dividend. The court (Judge Lowell) held that the three-tenths, consisting of profits laid aside before the passage of the Revenue Act, was capital, "not a divi-"dend out of gains and profits," and therefore not tax-able. As to the seven-tenths upon which the bank had already paid the tax of five per cent., the court held it could not be assessed a second time for the tax in the hands of the plaintiff.

It was said by the court (page 449):—

> "The general intent of the legislature not to tax "incomes twice is clear, and so is the injustice of "such taxation; but my decision rests mainly on this: "The intent of Congress was to tax the income of "the shareholders of the Suffolk Bank by a tax levied "directly upon the bank. The income of these plain-"tiffs has been so taxed. I am not ready to believe "that it was intended that the same income should "be again returned to the Government for a new "taxation merely because it passed through another "corporation before reaching the individual owners. "This conclusion I should reach, I think, without aid "from section 117" (exempting dividends received by persons, but not by corporations, from banks which had already paid the tax), "and although that sec-"tion contained no express exemption. * * * I "do decide that the plaintiff corporation itself, as a "shareholder in the Suffolk Bank, is not bound to "treat this dividend on which the income tax has "been paid as income liable to assessment again by "the Government."

II. Section 27 of the War Revenue Act is unconstitutional, because it imposes a direct tax not in accordance with constitutional requirements.

We do not deny the right of Congress to levy an excise tax upon business, in the shape of a license tax, or of a requirement of the payment of a designated amount, because of the privilege of doing business. As long as the

tax is not imposed upon the *rem*, but is required to be paid as a condition, or in consideration, of a business or privilege, it is an excise tax. It does not follow, however, that Congress is at liberty to label a direct tax as an "excise tax," if the assessment is really upon the *rem*.

The United States attorneys, in the court below, suggested that the tax upon legacies and distributive shares of personal property was similar in character to the one of which we complain. The tax assessed under section 29, however, is a tax upon the succession, or devolution, of title. Because of a succession, and upon such succession, a tax is imposed, measurable in the way pointed out by the Act.

The twenty-seventh section of the War Revenue Act requires:—

> "That every person * * * or company carrying on or doing the business of * * * or refining sugar * * * whose gross annual receipts exceed $250,000, shall be subject to pay annually a special excise tax equivalent to one-quarter of one per centum on the gross amount of all receipts of such persons, firms, corporations and companies in their respective business in excess of said sum of $250,000."

Whilst in Pennsylvania, persons have been held to be, or not to be, partners, by reason of the distinction between receiving a percentage of profits, and a sum equivalent to a percentage of profits, it cannot be that a great constitutional provision, designed for the protection of the various States which form the United States, can be made to depend upon a mere play upon words.

A tax of one-quarter of one per centum on the gross receipts, so far as regards the question of whether the same is, or is not, a direct tax, is in no respect dissimilar from a tax, "equivalent to one-quarter of one per centum," of such receipts.

In both cases, the tax is imposed upon the receipts.

Receipts are physical things, consisting of money. The section of the War Revenue Act which we are consider-

ing, requires persons engaged in a certain kind of business to pay a tax of one-quarter of one per centum upon all moneys passing through their hands in the shape of receipts, such receipts being, not those of a broker dealing with the moneys of others, but of a company dealing with receipts from the sale of its own product.

How can this be distinguished from a direct tax assessed upon the moneys?

We respectfully submit that this court has established, in the Income Tax Cases, a principle which renders impossible any tax of the character we are considering.

By the Act of January 1st, 1895 (28 Stat., 509, 553, chapter 349, section 27), it was provided:—

> "There shall be assessed, levied, collected and paid
> "annually upon the gains, profits and income re-
> "ceived in the preceding calendar year by every citi-
> "zen of the United States, whether residing at home
> "or abroad, and every person residing therein,
> "whether said gains, profits or income be derived
> "from any kind of property, rents, interest, dividends
> "or salaries, or from any profession, trade, employ-
> "ment or vocation carried on in the United States or
> "elsewhere, or from any other source whatever, a
> "tax of two per centum on the amount so derived
> "over and above $4000, and a like tax shall be levied,
> "collected and paid annually upon the gains, profits
> "and income from all property owned and of every
> "business, trade or profession, carried on in the
> "United States by persons residing without the
> "United States."

It was held that the tax on the rents or income of real estate was a direct tax within the meaning of that term as used in the Constitution of the United States. This was decided in Pollock *vs.* Farmers' Loan & Trust Company, 157 U. S., 429.

When the case again came before this court (158 U. S., 601), it was held that taxes on the income of personal property are likewise direct taxes.

It was argued by those who maintained the constitutionality of the income tax (158 U. S., 629)—

"That an income tax is not a property tax at all; "that it is not a real estate tax, or a crop tax, or "a bond tax; that it is an assessment upon the tax- "payer on account of his money-spending power as "shown by his revenue for the year preceding the "assessment; that rents received, crops harvested, in- "terest collected, have lost all connection with their "origin, and although once not taxable, have become "transmuted in their new form into taxable subject "matter. In other words, that income is taxable ir- "respective of the source from whence it is derived."

In the opinion of this court, delivered by the Chief Justice, he said (158 U. S., 634):—

"In these cases our province is to determine "whether this income tax on the revenue from prop- "erty does or does not belong to the class of direct "taxes. If it does, it is, being unapportioned, in "violation of the Constitution and we must so declare. "* * * We have considered the Act only in "respect of the tax on income derived from real "estate, and from invested personal property, and "have not commented on so much of it as bears on "gains or profits from business, privileges or employ- "ments in view of the instances in which taxation on "business privileges or employments, has assumed "the guise of an excise tax and been sustained as "such."

The United States attorneys argued in the court below that it was the duty of the plaintiff corporation to pay a tax of one-quarter of one percentum on all moneys received by it from sales of its property made before and after the passage of the Act, and from rentals of its wharves.

So far as regards the wharf rental and interest and dividends, the tax is necessarily one imposed upon the wharves, upon the deposits of oil, upon the shares of stock. This has been so clearly decided that it is unnecessary to waste time in arguing.

In what respect does a tax upon the receipts from the sale of a thing, differ from a tax upon the thing sold? The

tax is not one upon the doing of business, but it is one imposed upon the articles used in such business.

A tax upon the income derived from real and personal property having been held to be a tax upon the real and personal property, in what respect does a tax imposed upon the receipts from sugars sold, differ from a tax upon the sugar itself?

A commission merchant may sell the property of another, and his receipts will be nothing more than the compensation for his skill and experience. The owner of sugar who sells the same is not liable to be taxed upon the sugar. *Ergo* he is not liable to be taxed upon what he derives from its sale.

The business upon which it is claimed that an excise tax was imposed, is that of sugar refining. The amount of the tax is not made determinable upon the quantity of refining, but upon the sales by the Refining Company, of its own property.

If the tax be imposed upon the *rem*, it is unconstitutional because direct. It cannot be made legal, because it is called an excise tax, or is levied because of the doing of a business. What is protected from direct taxation is the *rem*. It is immaterial what motive actuates the Congress in ordering a tax to be assessed thereon.

In the first case in which this court declined to hold the income tax upon personal property as being a direct tax, the Chief Justice said (157 U. S., 579):—

> "We admit that it may not unreasonably be said
> "that logically if taxes on the rents, issues and profits
> "of real estate are equivalent to taxes on real estate
> "and are therefore direct taxes, taxes on the income
> "of personal property as such are equivalent to taxes
> "on such property and therefore direct taxes."

The Chief Justice quoted approvingly Cook *vs.* Pennsylvania, 97 U. S., 566, where it was held that a tax upon the amount of sales of goods made by an auctioneer, was a tax upon the goods sold.

Under the guise of a "special excise tax," upon persons

or corporations carrying on the business of refining sugar, a tax upon the recipts of such persons and corporations is imposed.

In Pacific Insurance Co. *vs.* Soule, 7 Wallace, 445, where a tax imposed upon insurance companies was sustained, Mr. Justice Swayne said:—

> "Excise is defined to be an inland imposition, sometimes upon the consumption of the commodity and "sometimes upon the retail sale; sometimes upon the "manufacturer and sometimes upon the vendor."

In the present case, however, the tax imposed was one upon the receipts of moneys derived from the sale of sugars, the price paid therefor being not merely for the refining, but upon the value of the raw material refined. In the Soule case, the tax was imposed upon the business done. There was no physical thing. The insurance companies sold nothing, they simply transacted a business and, upon the amount of this business, a tax was imposed.

In Nicol *vs.* Ames, 173 U. S., 509, upon each sale or agreement to sell, a tax was imposed, regulated by the amount of the sale as fixed by the agreement. In that case, however, no tax was imposed upon the receipts. All that was exacted was payment of a tax upon an agreement of sale in the shape of the attachment of a stamp.

Mr. Justice Peckham, in considering an argument that the tax was a direct tax because one upon the sale of property measured by the value of the thing sold and was therefore a tax upon the property itself, said (page 518):—

> "All the cases involved the question whether the "taxes to which objection was taken amounted practically to a tax on the property. If this tax is not "upon the property or on the sale thereof then these "cases do not apply.
>
> "We think the tax is in effect a duty or excise laid "upon the privilege, opportunity or facility offered "at boards of trade or exchanges for the transaction "of the business mentioned in the Act. It is not a

"tax upon the business itself which is so transacted,
"but it is a duty upon the facilities made use of and
"actually employed in the transaction of the business,
"and separate and apart from the business itself. It
"is not a tax upon the members of the exchange nor
"upon membership therein, nor is it a tax upon the
"sales generally. The Act limits the tax to sales at
"any exchange, or board of trade, or other similar
"places, and its fair meaning is to impose a duty upon
"those privileges or facilities which are there found
"and made use of in the sale at such place of any
"product or merchandise. Whether this facility or
"privilege is such a thing as can be legally taxed,
"while leaving untaxed all other sales made outside
"of such places, will be discussed further on. At
"present it is enough to say that the tax is not upon
"the property sold and cannot on that ground be
"found to be direct. The tax laid in the same Act
"upon a broker's note or memorandum of sale is a
"separate tax, although it may have reference to the
"same transaction. It is a tax on the note or
"memorandum itself where made by a broker, while
"in the other case the tax, although measured, in
"amount, by reference to the value of the thing sold,
"is in reality upon the privilege or facility used in the
"transaction or sale. The tax is not a direct tax
"within the meaning of the Constitution, but is, as
"already stated, in the nature of a duty or an excise.
"The amount of such tax when imposed in a case like
"this may be increased or diminished by the extent
"to which the privilege or facility is used, and it is
"measured in this Act by the value of the property
"transferred by means of using such privilege or
"facility, but this does not make the tax a direct one.
"A tax on professional receipts was recognized by
"the present Chief Justice in delivering the opinion
"of the court on the first hearing of the Income Tax
"case, 157 U. S., 429, 579, as an excise or duty and
"therefore indirect, while a tax on the income of
"personalty, he thought, might be regarded as direct.
"And upon the rehearing, 159 U. S., 601, it was dis-
"tinctly held that the tax on personal property or on
"the income thereof was a direct tax. This tax is

"neither a tax on the personal property sold nor upon
"the income thereof, although its amount is measured
"by the value of the property that is sold at the ex-
"change or board of trade."

So far as the court below permitted a tax to be assessed measured by receipts of wharfage, interest and dividends, it sustained a clearly unconstitutional tax, *i. e.*, one upon wharves, moneys and shares.

JOHN G. JOHNSON,
For Plaintiff in Error.

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No. 103. October Term, 1903.

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IN THE

Supreme Court of the United States.

Spreckels Sugar Refining Company,
Plaintiff in Error,

vs.

Penrose A. McClain, Collector of Internal Revenue for the First District of Pennsylvania.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

SUPPLEMENTAL BRIEF OF PLAINTIFF IN ERROR IN MATTER OF JURISDICTION.

JOHN G. JOHNSON,
For Plaintiff in Error.

10129

IN THE SUPREME COURT OF THE UNITED STATES.

Spreckels Sugar Refining Company, Plaintiff in Error,

vs.

Penrose A. McClain, Collector of Internal Revenue for the First District of Pennsylvania.

October Term, 1903.

No 103.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

SUPPLEMENTAL BRIEF OF PLAINTIFF IN ERROR IN MATTER OF JURISDICTION.

The appellate jurisdiction of this court, as it existed antecedently to the Evarts' Act of 1891, still exsts to such extent as, by that Act, it has not been modified.

By the fifth section of said Act, its jurisdiction is expressly reserved in the following cases: (1) where the question is that of jurisdiction of the Circuit Court; (2) in final sentences in prize cases; (3) in cases of conviction of a capital or otherwise infamous crime; (4) in any case involving the construction or application of the Constitution of the United States; (5) in any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question; (6) in any case in which the Constitution or law of a State is claimed to be in contravention of

the Constitution of the United States; (7) in appeals from the highest court of any State.

By the sixth section, an appellate jurisdiction is conferred upon the Circuit Court of Appeals in all other cases.

The judgments of that court are made final only in a certain class of cases, *i. e.*, (1) in those in which the jurisdiction of the Circuit Court was dependent entirely upon diverse citizenship of the parties; (2) in all cases arising under the patent laws, under the revenue laws, and under the criminal laws, and in admiralty cases.

If the present case is one solely arising under the revenue laws the appeal cannot be sustained, because the decision of the Circuit Court of Appeals was final.

We contend, however, that it is one which involved the construction and application of the Constitution of the United States, as well as the construction of the revenue laws. The court below was asked to interpret a revenue law; but it was also asked to determine that, *quâ* the imposition of the tax contested, there was no valid law, inasmuch as the Constitution of the United State forbade the passage of the one challenged.

The jurisdiction of the Circuit Court of the United States was originally invoked for two reasons: (1) because the tax was a direct tax not apportioned in accordance with the requirements of the Constitution of the United States; and (2) because it was not intended by the Act, to include receipts by the plaintiff in error from any other business than that of sugar refining. The case, therefore, as presented to the Circuit Court, involved a question arising under the Constitution of the United States, and also one arising under the revenue laws.

This court has a right to determine the question arising under the Constitution of the United States. The Circuit Court of Appeals would have had no right to determine that question had it not been that the case presented to it, involved also a matter over which it did have jurisdiction, viz., the interpretation of a revenue law of the United States.

This court has finally determined that, saving in cases where the appellate jurisdiction of the Circuit Court of Appeals is made final, an appeal lies to it from the judgment of that court; and that if the appeal to the Circuit Court of Appeals involves a constitutional question, as well as one over which it has appellate jurisdiction, that court may hear and determine both questions; but that in such contingency, the appellate jurisdiction of this court still continues.

The constitutional question in the Circuit Court, (Record, page 25), was thus determined by Judge McPherson:—

> "The principal question raised by this case is the "constitutionality of section 27 of the War Revenue "Act of June 13th, 1898, so far as sugar refiners are "concerned. The plaintiff contends that the tax "imposed by the section is a direct tax, specifically "laid upon the gross receipts of refiners, and is "invalid because it is not apportioned in accordance "with article 1, section 9, clause 4, of the Federal "Constitution; while the Government contends that "the tax is valid because it is not a direct tax, but an "excise laid upon the business of refining, and not "upon the receipts themselves arising from the busi-"ness. The present suit is a test case, destined for the "Supreme Court of the United States, and therefore "I shall not undertake the superfluous and somewhat "difficult task of discussing the numerous decisions "which have more or less bearing on the controversy. "A question of taxation is peculiarly a question for "a court of last resort; for the discussion of the "subject belongs essentially to a region of fiction "and construction, and the final decision is often "determined by considerations of policy alone. "Every tax, in the final analysis, is an exaction "from an individual, or a corporate, taxpayer; but "in many an instance the discussion stops short of "this point, and treats the tax as if it were to be "satisfied by the inanimate object, or the immaterial "franchise, in respect of which it has been imposed. "Frequent examples of such use of words may easily "be found, and this method of speech has led, I

"think, to much confusion and discord among the "cases, so that it is not hard to find ample authority "on almost any phase of a controversy concerning "taxation. In the case now before the court, it "would not be difficult to choose from the decisions "that have been cited by the respective parties, "sufficient authority to support either conclusion, "and, in this state of the question, I believe my duty "to be fully performed when I sustain the con- "stitutionality of the section without discussion, on "the ground that I have not been clearly satisfied "that it ought to be stricken down."

In the Circuit Court of Appeals, (Record, page 35), the constitutional question was thus dealt with:—

"The first and most important question raised "by the assignment of errors is whether the above "section is unconstitutional. This question, how- "ever, the learned judge of the Circuit Court declined "to discuss, because 'the present suit is a test case, "'destined for the Supreme Court of the United "'States;' and for the same reason, we, also, refrain "from discussing it, and deem it expedient to merely "state our affirmance of the constitutionality of the "section, upon the ground that the presumption in "favor of its validity has not been clearly confuted."

It is necessary, therefore, that the constitutional question which has thus been practically relegated by the Circuit Court and by the Circuit Court of Appeals, to this court, for actual decision, shall be by it determined. In dealing with this question, it necessarily considers the whole subject matter of controversy.

In American Sugar Refining Company *vs.* New Orleans, 181 U. S., 277, this court held, that where the jurisdiction of the Circuit Court attached solely because of diverse citizenship, no appeal lies to it from a decision of the Circuit Court of Appeals, even though, in the course of the proceedings in the Circuit Court, a constitutional question arose. This decision was the necessary result of the express provision of the statute. In that case, however, this

court further determined, that if the jurisdiction of the Circuit Court attached, not solely because of diverse citizenship, but also because of a constitutional question, the judgment of the Circuit Court of Appeals was not final.

The decision of the Circuit Court of Appeals is made final in cases arising under the revenue laws; but it is not made thus final in cases arising under the Constitution of the United States.

In Huguley Manufacturing Company *vs.* Galeton Cotton Mills, 184 U. S., 290, this court held:—

> "If the jurisdiction of the Circuit Court rests solely "on the ground that the suit arises under the Consti- "tution, laws or treaties of the United States, then "the jurisdiction of this court is exclusive, but if it "is placed on diverse citizenship and also on grounds "independent of that, then if carried to the Court "of Appeals the decision of that court would not be "made final, and appeal or writ of error would lie."

In Carey Manufacturing Company *vs.* Acme Company, 187 U. S., 427, a case arose under the patent laws of the United States. The jurisdiction of the Circuit Court was invoked originally, solely because of a question which arose under those laws. In a later stage of the proceedings, a constitutional question arose. This was determined by the Circuit Court of Appeals. Such determination was held by this court to be final. The case was one which arose solely under the patent laws, and the statute expressly excluded an appeal, under such circumstances, from the Circuit Court of Appeals.

It can hardly be contended that in making the decisions of the Circuit Court of Appeals final, "in cases arising under "the revenue laws," Congress intended to interfere with the jurisdiction of this court, over appeals arising in cases in which the jurisdiction of the Circuit Court was invoked at the outset, partly because of a constitutional question. Such question, one arising under the Constitution of the United States, can hardly be held to be one "arising under the "revenue laws."

In Robinson *vs.* Caldwell, 165 U. S., 359, the plaintiff

in error sought to maintain his right to two independent appeals, one to the Circuit Court of Appeals, from the judgment of the Circuit Court, and another to this court, from the judgment of the Circuit Court. Of course, his effort proved unsuccessful.

The meaning of Congress, when it provided for cases arising under the patent laws and under the revenue laws, was discussed by the Chief Justice in United States *vs.* American Bell Tel. Co., 159 U. S., 548-553. He said:—

> "How the case might be if the plaintiff had in-
> "voked jurisdiction on two distinct grounds, one of
> "them being independent of diverse citizenship, was
> "not determined. Nor is it necessary to pass upon
> "that question in this instance, for the motion may
> "be disposed of upon the inquiry whether it was
> "manifestly the intention of Congress to include
> "such a case as that before us in the words 'arising
> "'under the patent laws.' Now, actions at law for
> "infringement, and suits in equity for infringement,
> "for interference and to obtain patents, are suits
> "which clearly arise under the patent laws, being
> "brought for the purpose of vindicating rights cre-
> "ated by those laws, and coming strictly within
> "the avowed purpose of the Act, to relieve this
> "court of that burden of litigation which oper-
> "ated to impede the disposition of cases of pecu-
> "liar gravity and general importance. We are
> "of opinion that it is reasonable to assume that
> "the attention of Congress was directed to this class
> "of cases, and that the language was used as appli-
> "cable only to them; and that there is nothing in the
> "objects sought to be attained and the mischiefs
> "sought to be remedied by the Act which furnishes
> "foundation for the belief that Congress mani-
> "festly intended to place a limitation on the appel-
> "late jurisdiction of this court in a case such as
> "this."

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